

In the Matter of

Schools and Libraries Universal Service Support Mechanism

CC Docket No. 02-6

Petition for Reconsideration of the Streamlined Resolution of Requests Related to Actions by the USAC, DA 17-1048

November 16, 2017

Federal Communications Commission
Office of the Secretary, Marlene H. Dortch
445 12th Street SW
Washington, DC 20554

Dear Secretary Dortch:

Pursuant to 47 CFR §§ 1.106(f), 1.115(d), the Secaucus Public School District (“Secaucus”) hereby submits this Petition for Reconsideration with respect to the FCC’s denial of Secaucus’ request for a Waiver of the rule cited by USAC in its disposition letter dated March 6, 2017, which

requires that invoices be “postmarked no later than 120 days after the last date to receive service, or 120 days after the date of the Form 486 Notification Letter, whichever is later.”

More specifically, this Appeal/Waiver Request relates to the following applicant:

Appellant Name: Secaucus Public Schools
Billed Entity Number: 122772
Invoice Number: 2470519
Service Provider Name: TouchTone Communications, Inc. (“TouchTone”)
Discount Amount: \$20,508.00

Secaucus hereby submits this Petition for Reconsideration and respectfully requests that the Commission grant its waiver request on the basis that the instant facts qualify as “extraordinary circumstances.”

Statement of Relevant Facts

Secaucus filed its original FCC Form 472 referencing FRN 2625781 in August 2015 (**Exhibit A**). On August 25, 2015, Secaucus responded to an initial request for information and provided the requested materials. USAC approved that FCC Form 472 on or about August 30, 2015 and provided the invoice number 2229799 (**Exhibit B**).

Secaucus subsequently received a letter dated November 25, 2015, which stated that the FCC Form 472 at issue and associated invoices had been cancelled due to issues with the service provider (**Exhibit C**). Under E-Rate Program rules in effect at that time, service providers were required to verify applicants’ requests for discounts. Secaucus subsequently contacted the Help Desk, which instructed the District to file a new FCC Form 472 to request the same discount previously approved in August 2015. Secaucus did so in December 2015 (**Exhibit D**).

On January 5, 2016, the District’s E-Rate consultant, CRN 16043594, received an e-mail correspondence from Carline Antione, Associate Manager/Invoicing Auditor, in which she identified herself as the person reviewing the new FCC Form 472 and requested additional back-up information and materials (**Exhibit E**).

Secaucus provided Ms. Antione with the information requested on January 5, 2016 (**Exhibit F**). After receiving no follow-up correspondence from Ms. Antione for approximately two weeks, Secaucus’ E-Rate consultant sent an email to Ms. Antione on January 20, 2016 requesting an update (**Exhibit G**). On January 29, 2016, Ms. Antione responded by e-mail and stated, “All necessary documents were received and your application is being processed” (**Exhibit H**).

However, on March 23, 2016, Secaucus received a correspondence from USAC denying Secaucus' request for discounts, citing "incomplete documents for review" (**Exhibit I**). On or about May 18, 2016, Secaucus submitted its appeal of that denial (**Exhibit J**).

Secaucus did not receive USAC's written decision on that appeal until, after months of waiting on a disposition, Secaucus submitted a new FCC Form 472 on or about November 10, 2016 in connection with FRN 2625781. (**Exhibit K**). On November 14, 2016, USAC denied the District's invoice, citing the "Invoice Received Date [11/10/2016] Later Than FCC Extension Date [07/27/2016]" (**Exhibit L**).

Upon receiving the denial by email on November 14, 2016, the District's E-Rate consultant contacted the Help Desk to inquire. After calling the Help Desk to inquire on November 16, 2016, USAC sent an electronic copy of the appeal disposition to the undersigned. (Email and attachment annexed hereto as **Exhibit M**). The disposition correspondence is dated June 27, 2016. The letter states that the District's appeal had been approved and advises of a 30-day deadline to submit a new invoice. The new invoice deadline, therefore, was set as July 27, 2016.

On December 5, 2016, Secaucus filed an appeal of the November 2016 invoice denial (**Exhibit N**). In its appeal, Secaucus noted the extraordinary circumstances that impeded a timely submission of the invoice in question. First, neither Secaucus nor its E-Rate consultant actually received USAC's disposition letter dated June 27, 2016. (**Affidavit of Vincent LaForgia, ¶6**).

That notwithstanding, even if Secaucus had received the disposition letter, it could not have timely filed a new invoice because of the new discount disbursement process implemented by USAC effective July 1, 2016. Under that new process, applicants were required to file an FCC Form 498 as a mandatory predicate to filing an FCC Form 472. After July 1, 2016, USAC would not process requests for discounts in the absence of an approved and verified FCC Form 498.

Though Secaucus certified its Form 498 on July 20, 2016, it did not receive a request for bank account verification documentation until August 29, 2016. (**Exhibit O**). After submitting the requisite documentation, Secaucus received notice that USAC had approved its Form 498 on August 31, 2016. (**Exhibit P**).

By letter dated March 6, 2017, USAC denied Secaucus' appeal, citing the following as the basis for its decision:

Invoices must be postmarked no later than 120 days after the last date to receive service, or 120 days after the date of the Form 486 Notification Letter, whichever is

later. You did not demonstrate otherwise in your appeal. Therefore your appeal is denied.

(**Exhibit Q**). This justification does not address the facts of this matter, and no further explanation was offered.

This Request for Reconsideration

The Commission has previously granted appeals and waiver requests when such application fails to further the purposes of section 47.254(h) or serve the public interest in any meaningful way.ⁱ Secaucus notes that its May 2016 appeal of USAC's initial denial was originally approved and, thus, USAC had previously determined that the District was ultimately entitled to the funds it now seeks pursuant to this Request. USAC's denial does not allege Secaucus violated a Commission rule. There is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to the core program requirements. Rather, the denial in the instant matter stems solely from USAC's rigid application of a procedural deadline despite numerous circumstances that fall outside Secaucus' realm of control.

The FCC has previously granted waivers under similar circumstances, where an applicant neglects to request an invoice extension due to circumstances outside of its control. *See, e.g., Petition for Reconsideration by the Jefferson-Madison Regional Library, Charlottesville, VA et al.*, Order on Reconsideration, File Nos. SLD-976590, et al., CC Docket No. 02-6 (2017). Secaucus hereby submits that it could not reasonably have met the invoice submission deadline of July 27, 2016. Due to ongoing mail carrier issues, it did not receive notice of the disposition and, thus, was unaware of the invoice deadline. Consequently, the District could not reasonably have known of the inevitable need to request a further invoice deadline extension. Moreover, the delays attendant to the newly-implemented FCC Form 498 review process rendered the July 27 submission deadline impracticable, as Secaucus did not receive USAC's request for bank account verification documents until August 29, over one month after the new invoice deadline.

In his letter to Craig Henderson of USAC dated April 18, 2017, Chairman Pai instructed that USAC's efforts "should focus first on supporting and completing the basic EPC functionality needed to ensure that applicants can apply for and receive their funds, and perform other necessary tasks, in a timely fashion." He further goes on to instruct that "USAC must be solution- and customer-service oriented no matter the IT situation." USAC's ability to timely review a generic Form 498 certainly implicates an applicant's ability to "apply for and receive [its] funds, and perform other necessary tasks, in a timely fashion." By denying this waiver request, the FCC is effectively holding

Secaucus responsible for the non-delivery of its mail and USAC's inability to timely review the Form 498. Both of these issues clearly fall outside of Secaucus' area of control and, thus, qualify as extraordinary circumstances sufficient to grant a waiver.

Furthermore, denial of this funding request inflicts undue hardship on the District by denying it over \$20,000 that could otherwise be used to defray the cost of Internet and/or other telecommunications services. It defies logic that the rules require the FCC to deny Secaucus money to which USAC previously determined it was entitled on two occasions. Such a result is antithetical to the spirit of the Program and certainly runs counter to serving the public interest.

For all of the above reasons, Secaucus respectfully requests that the FCC reconsider its prior decision and grant its request for waiver.

Please direct all inquiries concerning this Petition for Reconsideration to the following:

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Respectfully Submitted,



Vincent LaForgia

Attachments

ⁱ See, e.g., *Request for Review of the Decision of the Universal Service Administrator by the Bishop Perry Middle School et al.*, Order, File Nos. SLD-487170, et al., CC Docket No. 02-6 (2006); *Request for Review and Waiver of the Decision of the Universal Service Administrator by the Alaska Gateway School District Tok, et al.*, Order, File Nos. SLD-412028, et al., CC Docket No. 02-6 (2006)